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Google Inc. and Google Payment Corporation  
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10 UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
11 SAN JOSE DIVISION

12 ALICE SVENSON, individually and on  
13 behalf of all others similarly situated,

14 Plaintiff,

15 v.

16 GOOGLE INC., a Delaware Corporation,  
and GOOGLE PAYMENT  
17 CORPORATION, a Delaware Corporation,

18 Defendants.

Case No. CV-13-04080-BLF

**DEFENDANTS GOOGLE INC. AND  
GOOGLE PAYMENT CORPORATION'S  
RESPONSE TO PLAINTIFF'S  
ADMINISTRATIVE MOTION FOR  
LEAVE TO FILE MEMORANDUM OF  
LAW IN OPPOSITION TO DEFENDANTS'  
MOTION TO EXCLUDE EXPERT  
TESTIMONY**

Judge: Hon. Beth Labson Freeman

1 Defendants' Google Inc. and Google Payment Corporation ("Defendants") oppose  
 2 Plaintiff's Administrative Motion for Leave to File Memorandum of Law in Opposition to  
 3 Defendants' Motion to Exclude Expert Testimony (Dkt. No. 177) ("Motion for Leave") for the  
 4 following reasons.

5       1. Plaintiff's Motion for Leave asks for after-the-fact approval of an overlength 15-  
 6 page brief (specifically, Plaintiff's Opposition to Defendants' Motion to Exclude Expert  
 7 Testimony (Dkt. No. 174) ("Plaintiff's Opposition")) that Plaintiff's counsel acknowledges  
 8 significantly exceeds the 10-page limit in this Court's Standing Order re: Civil Cases, ¶ E.1.(b).

9       2. Plaintiff argues her overlength brief was "required to adequately address the  
 10 complicated legal and factual questions in Defendants' motion." Motion for Leave ¶ 3. But  
 11 Defendants' Motion to Exclude complied with the Standing Order's 10-page limit. *See*  
 12 Dkt. No. 163-6. So, the 10 pages Plaintiff was permitted should have been "adequate" to respond  
 13 to the 10 pages of briefing Defendants submitted. Instead, extra pages in Plaintiff's Opposition  
 14 were devoted to, among other things, recapitulations of Plaintiff's views regarding her damages  
 15 theories and prospects for class certification, rather than addressing the specific arguments in  
 16 Defendants' Motion to Exclude. *See* Plaintiff's Opposition at 2-4. These circumstances do not  
 17 justify Plaintiff's request for retroactive approval of her overlength submission. *See Cuevas v.*  
 18 *Hartley*, -- F.3d --, 2016 WL 4136977, at \*1 (9th Cir. Aug. 4, 2016) (Kozinski, J., dissenting)  
 19 ("Instead of getting leave to file an oversized brief before the deadline, lawyers wait for the last  
 20 minute to file chubby briefs and dare us to bounce them....This encourages disdain for our rules  
 21 and penalizes lawyers [] who make the effort to comply.").

22       3. The argument that extra pages were necessary is inconsistent with the concurrent  
 23 acknowledgment that Plaintiff's counsel was unaware of the 10-page limit and the extra pages  
 24 were a "mistake." Motion for Leave ¶ 2. The 15-page brief could not have been the product of  
 25 an informed decision that 15 pages were needed when only 10 were allowed, because counsel  
 26 was unaware of the Standing Order's 10-page limit in the first place.

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1       4. Defendants offered Plaintiff a perfectly acceptable solution that counsel refused.  
 2 At noon the first business day after Plaintiff's Opposition was filed, Defendants' counsel alerted  
 3 Plaintiff's counsel that the brief was not compliant. *See* Declaration of Charles C. Sipos in  
 4 Support of Defendants' Google Inc. and Google Payment Corporation's Response to Plaintiff's  
 5 Administrative Motion for Leave ("Sipos Decl.") ¶ 2, Ex. A. Defendants offered for Plaintiff to  
 6 file a compliant brief by 8:00 PM on Wednesday, August 3, and that Defendants would reply  
 7 based on that filing. *Id.* ¶ 3. Defendants were therefore, as a matter of professional courtesy,  
 8 willing to shortchange themselves several days' time to prepare their Reply brief to allow  
 9 Plaintiff's counsel to fix the mistake. Plaintiff would not agree. *Id.* ¶ 3.

10      5. Plaintiff's solution was for Defendants to stipulate to her (already filed) overlength  
 11 brief, in exchange for Plaintiff's agreement to Defendants filing an overlength reply. *Id.* ¶ 4. But  
 12 this was unacceptable to Defendants: It was a "solution" that called for *both parties* to violate the  
 13 Standing Order with overlength briefs, thus compounding the instead of correcting it. *Id.* ¶ 4.

14      6. Defendants intend to file a 5-page Reply in Support of Defendants' Motion to  
 15 Exclude, notwithstanding Plaintiff's non-compliant Opposition. *Id.* ¶ 4. However, in light of  
 16 Plaintiff's unwillingness to file a compliant brief when given the opportunity, Defendants believe  
 17 it would be proper for this Court to disregard the excess pages in Plaintiff's Opposition. *See*  
 18 *Cutlip v. Deutsche Bank Nat'l Trust Co.*, 2015 WL 5438185, at 4 n.5 (N.D. Cal. Aug. 28, 2015)  
 19 (Freeman, J.) (striking and declining to consider arguments made in pages of briefing that  
 20 exceeded page limits).

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22 DATED: August 8, 2016

**PERKINS COIE LLP**

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By: /s/ Charles C. Sipos  
 24 Charles C. Sipos

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Attorneys for Defendants  
 26 Google Inc. and Google Payment Corporation

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